



**THE ATTORNEY GENERAL  
OF TEXAS**

GERALD C. MANN

AUSTIN 11, TEXAS

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ATTORNEY GENERAL

Hon. M. O. Flowers  
Secretary of State  
Austin, Texas

Dear Sir:

Att'n: Claude A. Williams

Opinion No. 0-1711

Re: Is the name "Texas Federation  
of Taxpayers" available for co-  
operate use due to the similar-  
ity of such name to the exist-  
ing corporation by the name of  
"Texas Taxpayers' Association"?

We are in receipt of your request for an opinion  
on the following question:

"Application has been made to this Department  
by the "Texas Federation of Taxpayers" for a cor-  
porate charter. Its domicile is to be at Mount  
Pleasant, Texas.

"Our records disclose that a domestic corpora-  
tion by name of 'Texas Taxpayers' Association',  
domiciled at Longview, Texas, has previously been  
incorporated and is in good standing.

"We respectfully request your opinion as to  
whether or not the name 'Texas Federation Taxpay-  
ers' is available for corporate use due to the  
similarity of such name to the existing corporation  
by name of 'Texas Taxpayers' Association'.

We believe the law of Texas in respect to the adop-  
tion of a similar name by a corporation is summed up in the  
following paragraph from the case of **THE GRAND TEMPLE**, etc.,  
v. **INDEPENDENT ORDER**, K. & D. of T., 44 S.W. (2d) 973:

"A corporation cannot lawfully adopt either the  
same name as that of an existing corporation created  
by or under the laws of the state, or of an unincor-  
porated association or partnership therein, or a name  
so similar to that of an existing corporation or as-  
sociation that its use is calculated to deceive the  
public and result in confusion or unfair and fraud-

ulent competition (14 C.J. p. 312) and may be enjoined from such use, whatever may be the character of the corporations, and whether or not they are formed for profit, to the same extent and upon the same principles that individuals are protected in the use of trade-marks and trade-names (14 C.J. p. 326). And there can be no distinction in principle between taking the entire name of the prior corporation and taking so much of it as will mislead into the belief that the two concerns are the same. The mischief is of precisely the same character, differing only in degree. Similarity, and not identity, is the usual recourse where one corporation seeks to benefit itself by the name of another."

Where a subsequent corporation seeks to adopt a name similar to or so nearly like that of another corporation as would be likely to produce mistake or confusion in the public mind, the Secretary of State would be acting within his authority in refusing to grant a charter to the offending corporation.

BOARD OF INS. COMM. v. NATIONAL AID LIFE (Civ. App.) 73 S.W. (2d) 671, error refused.

"The statutes of many states expressly adopt the rule, and it has been held, even where no such express statutory provision exists, the court, officer, or administrative or ministerial board whose duty it is to grant or refuse charters, or articles of incorporation, or certificates of authority, or permits to transact or carry on business within a state, will not permit the use by any subsequent corporation of a name similar to or so nearly like that of another corporation as would likely to produce mistake or confusion."

The general rule is that "there is an unlawful appropriation where one corporation appropriates and uses the distinctive portion of another corporation's name."

THOMPSON ON CORPORATIONS, 3rd Ed., Vol. 1, p. 81:

On page 100 of Thompson on Corporations, supra, various names, the similarity of which has been held to warrant injunctive relief, are set out as follows:

"The Holmes, Booth & Atwood Mfg. Co.' and 'Holmes, Booth & Hayden'; 'United States Mercantile Reporting Co., and 'United States Commercial Agency

& Collecting Co.'; 'The Young Woman's Christian Association' and 'International Committee of the Young Woman's Christian Association'; 'Lamb Knit Goods Co.' and 'Lamb Glove & Mitten Co.'; 'The Legal Aid Society' and 'The Co-operative Legal Aid Society,' on the ground that the similarity was calculated to mislead the public; 'Society of the War of 1812' and 'Society of the War of 1812 in the State of New York'; 'Edison Storage Battery Co.' and 'Edison Automobile Co.'; Philadelphia Trust, Safe Deposit & Insurance Co., a corporation which by usage acquired the name 'The Philadelphia Trust Co.,' and a later corporation having the name 'The Philadelphia Trust Co.'; 'The Dodge Stationery Co.' and 'J. S. Dodge Co.,' where it appeared that the latter was conducting the same kind of business; 'Cincinnati Vici Shoe Co.' and 'Cincinnati Shoe Co.,' although the secretary of state had permitted the incorporation of each; 'The Manchester Brewing Co.' and 'The North Cheshire & Manchester Brewing Co.,'; 'Landlords' Protective Bureau' and 'Landlords' Protective Department,' on the ground that the similarity was sufficient to mislead and confuse the public as to the identity of the corporations; 'The Hanoverian and Oldenburg Coach Horse Association of America' and 'The Oldenburg Coach Horse Association of America'; 'N.J. Henry Manufacturing Company, Inc.' and 'Henry Screen Manufacturing Company'; 'Pansy Waist Company Inc.' and 'Pansy Dress Company, Inc.'; 'Grand Rapids Furniture Company' and 'Grand Rapids Furniture Shops'; 'Sovereign Camp of the Woodmen of the World' and 'Woodmen of the World'; 'Supreme Lodge of the World Loyal Order of Moose' and 'Improved Benevolent Protective Order of Moose of the World.'"

In the case of The Grand Temple, etc. v. Independent Order, K & D of T., supra, a Texas Commission of Appeals case, it was held that the name "Knights and Daughters of Tabor of International Order of Twelve" and "Independent Order of Knights and Daughters of Tabor of America", were similar as a matter of law, entitling the former corporation to injunctive relief against the latter.

It is obvious that the distinctive portion of the names of the above two charitable corporations is "Knights and Daughters of Tabor" and that the mere addition of unimportant words in an appellation of such length would not distinguish the second corporation from the first.

In the present instance we have the two names:

"Texas Taxpayer's Association" and "Texas Federation of Taxpayers". The test is whether or not the names are so similar that their use will deceive the public and result in confusion and unfair competition to the corporation who first obtained its name as a part of its franchise. •

We concede that the issue is close due to the use of the words "Texas" and "Taxpayers" but it cannot be concluded that the average man would be confused by the use of the words "association" and "federation". The established rule is that the similarity must be such that any person, of such reasonable care and caution as the public generally are capable of using and may be expected to exercise, would mistake the one corporation for the other. The words "association" and "federation" do not have the same meaning nor are they indistinguishable by idem sonans. A "federation of Taxpayers" suggests a far greater scope and magnitude than an "association". The present case is not so clear cut as the "Knights and Daughters of Tabor" conflict. Furthermore, we do not find the same degree of similarity between the names "Texas Taxpayer's Association" and "Texas Federation of Taxpayers" as exists between the names given in the list quoted above from Thompson on Corporations.

The rights of the corporation first established must be recognized, but the governing rule of law will not be strictly and harshly applied. It is true that similarity, rather than identity of name, is the determining norm, but in the present instance the distinctive essence of the name "Texas Taxpayer's Association" is not appropriated or violated by the words "Texas Federation of Taxpayers". Again the arrangement of words is essentially different and suggest a distinct organization.

We think there is a closer analogy between the names under consideration and those instances of similarity cited in Thompson on Corporation where injunctive relief was refused than those where the relief was granted.

THOMPSON ON CORPORATION, 3rd Ed. Vol. 1, p. 102:

"There are some cases where the names of the corporations were somewhat similar but the courts denied the relief by injunction; as, for instance, in the cases of the following names: 'Elgin Butter Company' and 'Elgin Creamery Company'; 'International Banking Company' and 'International Bank'; 'Industrial Mutual Deposit Co.' and 'Central Mutual Deposit Co.'; 'Richardson & Boynton Co.' and 'Richardson and Morgan Co.'; the 'Goodyear Rubber Co.,

a New York corporation, and 'Goodyear's India Rubber Glove Manufacturing Co.,' a Connecticut corporation. The supreme court of Massachusetts refused to enjoin a benevolent society acting under the name 'Order of Scottish Clans' at the suit of a prior corporation engaged in similar business under the name 'American Order of Scottish Clans,' after a certificate of incorporation had been granted by the secretary of state under a statute which provided that the certificate should be conclusive evidence of the existence of the corporation at the date of such certificate. So, it was held that the 'Sun Life Assurance Society,' of England, was not entitled to enjoin the 'Sun Life Assurance Company of Canada' from transacting a similar business in England, in the absence of proof of actual fraud, either practiced or attempted."

It is our opinion that the similarity between the names "Texas Taxpayers Association" and "Texas Federation of Taxpayers" is not so marked as to violate the rule of law that a corporation cannot adopt a name so similar to that of an established corporation that its use will deceive the public and result in confusion, and that as a result the name "Texas Federation of Taxpayers" is available for corporate use in Texas despite the existence of a corporation with the name "Texas Taxpayers" Association", and that the secretary of state may not refuse to issue a charter to the "Texas Federation of Taxpayers" solely on the ground of similarity of name.

Trusting that we have fully answered your inquiry,  
we are

Yours very truly

ATTORNEY GENERAL OF TEXAS

By s/Dick Stout  
Dick Stout  
Assistant

DS:ob:wc

APPROVED NOV 28, 1939  
s/Gerald C. Mann  
ATTORNEY GENERAL OF TEXAS

Approved Opinion Committee By s/BWB Chairman